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Article

Compensation for Expropriated Community Farmland in Nigeria: An In-Depth Analysis of the Laws and Practices Related to Land Expropriation for the Lekki Free Trade Zone in Lagos

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Abstract: In Nigeria, the recurring impoverishment and other negative socioeconomic impacts endured by landholders affected by expropriation are well-documented and call into question the Land Use Act's (LUA) effectiveness in protecting local land rights. The World Bank's Land Governance Assessment Framework found that, in Nigeria, "a large number of acquisitions occurs without prompt and adequate compensation, thus leaving those losing land worse off, with no mechanism for independent appeal even though the land is often not utilized for a public purpose". Such negative outcomes may be due to a number of factors, including corruption, limited capacity, and insufficient financing as well as Nigeria's weak legal framework. According to a recent study of compensation procedures established in national laws of 50 countries, Nigeria's compensation procedure lags behind many of the countries assessed because the LUA mostly fails to adopt international standards on the valuation of compensation. This article examines Nigerian expropriation and compensation procedures in more detail by combining both an in-depth legal analysis of Nigeria's expropriation laws as well as survey and qualitative research that indicates, to some extent, how expropriation laws function in practice in Nigeria. Based on our legal assessment, surveys, and interviews with both government and private sector officials involved in the LFTZ, we found that the Nigerian government failed to comply with international standards on expropriation and compensation, both in terms of its laws and its practices in the LFTZ case. This article expands our conference paper written for the UN Economic Commission of Africa Conference on Land Policy in Africa, which took place in Addis Ababa, Ethiopia in November of 2017. Under Nigeria's LUA, affected landholders are not granted the right to participate in expropriation and compensation decision-making or otherwise be consulted on matters affecting their land and livelihoods. In 2004, the LUA enabled the Lagos State government to set aside 16,500 hectares of expropriated agricultural land from Lagos coastal communities to develop the Lekki Free Trade Zone (LFTZ). Following the expropriation, the Lagos State Government (LSG) and Lekki Worldwide Investment Limited signed a Memorandum of Understanding (MOU) with nine affected communities in 2007. The MOU is a legally binding document that promises compensation, alternative land, jobs, healthcare, and educational opportunities to the communities affected by expropriation. However, our research suggests that the MOU has not been fully honored. According to a survey of 140 affected households conducted in August 2017, the government still had not paid sufficient compensation to all affected communities or had not yet provided them with suitable alternative land, jobs, equity shares and other entitlements promised by the MOU. While there are several reasons why the MOU has not

been honored, this article mainly focuses on the failure of the LUA to establish binding obligations on government officials to compensation, resettle, and reconstruct the livelihoods of affected landholders. This article argues that the LUA must be reformed so that, whenever land is expropriated for development projects, the government and private sector entities (i.e., acquiring bodies) have a legal obligation to provide sufficient and prompt compensation, alternative land, jobs, equity shares, and other entitlements to affected landholders. Moreover, the LUA should obligate the government and acquiring bodies to follow a transparent and participatory process when expropriating land and compensating communities so that, if properly enforced, the reformed LUA can mitigate the risks commonly associated with expropriation, including landholder impoverishment, displacement, food insecurity, and conflict.

Keywords: compensation; land valuation; expropriation; land tenure; compulsory acquisition; land investment; indigenous land rights

1. Introduction

This article examines the laws and practices related to land expropriation in Nigeria, with a specific focus on the case of the Lekki Free Trade Zone (LFTZ) [1–3]. Land expropriation for the LFTZ in Lagos, Nigeria not only caused affected communities to lose pivotal access to farmland and natural resources needed for subsistence, but also triggered social unrest and violent conflict [4]. In the early hours of 12 October 2015, a gunshot was fired after communities affected by the LFTZ caused a “public disorder” by barricading the entrance to the project site in protest of the expropriation of their farmland [5,6]. The communities reportedly blocked the project site after several failed attempts at discussing “employment and general welfare issues” with company officials [6]. Community members laid “charms” at the project entrance, and police officers proceeded to burn and remove these charms [6]. This provoked an escalation in the protest [6]. The incident resulted in the death of Tajudeen Disu, Managing Director of the Lekki World Wide Investment Limited (a major investor in the LFTZ) [6]. Disu reportedly died from a gunshot, but there were conflicting accounts of who fired the shot [6]. A Tribunal of Inquiry report (hereinafter “White Paper”) written in March 2016 by judges and government officials indicated that Disu was caught between police and communities trying to appease the community protesters when the shot was fired [6]. According to the White Paper,

The situation got escalated into commotion and Mr. Disu was invited by Dangote to intervene ... Mr. Disu arrived at the scene in the company of the Chairman of the Lekki Coastal Area Development Association ... the Baale of Tiye (a local community) ... The policemen were on one side of the road while the people were on the other side ... Mr. Disu and the said two who accompanied him stood facing the people with their back to the policemen ... the people allege that all the while, the policemen were shooting firing canisters of teargas, the police deny this ... Mr. Disu put his hands up ... Suddenly, Mr. Disu went down [6].

The investigation concluded “Mr. Disu could only have been shot either by a Policeman or by a member of the community.” In response to Disu’s death, the police arrested 10 Okunraie community members they claimed were responsible [7]. Meanwhile, community members stated in a sworn affidavit that a stray bullet fired by police killed Disu [6]. The White Paper recommended a “fresh investigation of the killing” by local detectives, but it remains unclear what is the status of the investigation. Overall, this incident shows how the failure of governments and project developers to fully compensate and reconstruct the livelihoods of affected landholders can lead to protest, social unrest, and even violence. As demonstrated by empirical research on many other land conflicts across Africa, loss of land and insufficient compensation payments are often significant drivers of conflict [8].

The quagmire of conflicting information emanating from this deadly event is emblematic of the general complexity and contentiousness surrounding the LFTZ. Based on interviews with respective stakeholders, the viewpoints of government and private sector officials and those of affected communities regarding the LFTZ were often in direct opposition of one another. While government and company representatives we interviewed stated that the LFTZ will serve the public interest by stimulating local economic growth and create jobs, a general observation from our interviews with local communities is that tensions are running high among community members; many respondents to the survey expressed strong opposition to the LFTZ and skepticism that it will enable them to reap socioeconomic benefits.

Eleven years prior to Disu's death, in 2004, the Lagos State Government (LSG) set aside 16,500 hectares of undeveloped land to build the LFTZ [6,9].¹ Still under construction, the LFTZ is designed to eventually become the largest trade zone in Africa [10]. Project developers claimed the LFTZ would be a catalyst for economic development in Lagos state and a major attraction for foreign direct investment [10]. The former Commissioner of Trade and Investment in Lagos Dr. Olusegun Aganga stated in 2012 that investors in the free zone would be exempted from all taxes, custom, duties and levies; this measure would enable the creation of 300,000 direct and 600,000 indirect jobs in the next five years [11]. According to the former Lagos State Governor, Babatunde Raji Fashola, "every time we [Nigeria] import goods, we invariably without knowingly exports jobs because we keep those industries off shore away from our economy busy. In addition, we can win by keeping the jobs here in our land" [10]. Under the Nigeria's Land Use Act (LUA), State Governors have broad authority to justify the use of expropriation for economic development. Even though the expropriation as serving the public interest of creating jobs for Nigerians and stimulating local economic growth, the LFTZ is tax-free for foreign investors according to BBC report [9]. Foreign companies can bring their own employees into the LFTZ and take profits back to their home countries [10]. Since most of the LFTZ has not yet been built, it remains to be seen whether Nigerians will reap significant economic benefits from the project.

This article argues that, regardless of whether the LFTZ will ultimately serve the public interest, the process of developing the LFTZ indicates poor compliance, both in law and in practice, with internationally recognized standards on expropriation, compensation, and resettlement. Indigenous communities historically used the expropriated land for farming, grazing, collecting firewood, retrieving medicinal plants, and other customary practices. In response to losing their rights and access to farmland, they demanded compensation, alternative land, jobs, and equity shares from the companies involved in the LFTZ. In 2007, the LSG, Lekki Worldwide Investment Limited (LWIL), and nine affected communities signed a legally binding Memorandum of Understanding (MOU). The MOU promised compensation, alternative land, jobs, healthcare, and educational opportunities to the communities affected by expropriation. However, our research indicates that, as of August 2017, many of these entitlements had still not been provided.

This article presents an interdisciplinary study that combines both a legal analysis of the laws applicable to expropriation and compensation in Nigeria as well as survey and other empirical research. The main research questions examined are:

1. Do Nigeria's laws comply with internationally recognized standards on expropriation, compensation, and resettlement?
2. Did the government follow international standards on expropriation, compensation, and resettlement in the LFTZ case?

¹ The LFTZ was initiated through a joint venture between a state-owned company called Lekki Worldwide Investments Limited (LWIL), the LSG, and a Chinese consortium of companies led by the China Civil Engineer Construction Corporation (CCECC). This joint venture resulted in the establishment of the Lekki Free Zone Development Company (LFZDC). The Chinese consortium owns sixty percent of the LFZDC equity, LWI: Holds 20%, and other Nigerian investors hold 20%.

3. What are some recommendations for reforming Nigeria's legal framework related to expropriation, compensation, and resettlement so that it complies with international standards?

In August 2017, the authors surveyed 140 affected households from 10 different communities affected by land expropriation for the LFTZ. The reason we developed a methodology that combines both legal and survey research is that we aimed to assess the law on the books as well how the law operates on the ground in Nigeria. As discussed in Section 5 of this paper, the responses to survey indicate, to some extent, whether the government has effectively enforced the law when expropriating land for the LFTZ. The survey responses also provide some indication of landholder perceptions of government expropriation practices for development projects. For more detail on the survey method and results, see Section 5 below.

1.1. Legal Reform as a Solution to Arbitrary Expropriation and Insufficient Compensation

Using expropriation power, government bodies in Nigeria and other countries have often justified the expropriation of community land for development projects on the grounds that such projects will stimulate local economic growth, create jobs, or otherwise serve a “public purpose” [1,12]. However, in many countries, the law either does not precisely define “public purpose” or grants government authorities broad discretion to interpret what constitutes a “public purpose” [13]. Subjected to little oversight, these authorities can acquire vast parcels, even when it is unclear whether the public will actually realize economic benefits from the project [14].

Even when expropriation is used for genuine public purposes, one-time, lump-sum monetary compensation for expropriated land has proven time after time to be insufficient in ensuring the livelihood reconstruction and long-term socioeconomic stability of affected communities [15]. Empirical studies conducted in a broad range of countries indicate that a cash payment, by itself, often cannot prevent the impoverishment and other risks associated with expropriation [16–19]. Expropriated rural farmers, for example, may have difficulty using the cash to purchase alternative farmland and, with limited knowledge of other occupations and income-generating activities, may fall into poverty if they are unable to do so. As a response to the recurring issue of insufficient compensation, scholars and practitioners have advocated for project developers to start investing more financial resources into resettlement processes and allowing affected populations to share in the project benefits while obtaining access to education, healthcare, and other basic amenities [20]. According to Cernea, resources for financing resettlement processes can come from economic rents (i.e., windfall profits) generated by development projects (e.g., natural resource extractive projects) and that benefit-sharing between affected populations and project developers is feasible as shown in a number of documented cases, including development projects initiated in China, Brazil, Canada, Columbia, and Japan [21].

This article argues that statutory reform of Nigeria's LUA is key to ensure that more investment in the reconstruction of landholder livelihoods occurs when land is expropriated. While there are a number of factors that contribute to affected landholder impoverishment, such as corruption, lack of financing, lack of political will, and limited capacity, the lack of a legal framework has been shown to be a significant factor: a study published by the World Bank in 1996 found that income restoration was lacking in countries that initiated displacing projects without first establishing country-wide policy or legal frameworks for resettlement and income restoration [22]. The same study found that projects with sufficient funding for resettlement, initiated in countries with policy and legal frameworks that protect the rights of affected landholders, enabled successful income restoration of landholders post-expropriation [22].

From a theoretical standpoint, it can be well-argued that expropriation laws must contain clearly defined, robust provisions to prevent arbitrary government decision-making on expropriation and compensation. According to the principle of “legality”, government expropriation actions should be limited by enacted laws that are clearly written with adequate precision and clarity; as argued by Raz, laws should provide effective guidance in order to prevent governments from making arbitrary, ad-hoc decisions [23,24]. Dagan further comments,

Ad hocism contravenes the conception of the rule of law . . . Only relatively stable and predictable law can serve as a ‘safe basis for individual planning’, which is a prerequisite of people’s ability to ‘form definite expectations’ and ‘plan for the future’ . . . case-by-case adjudication similarly threatens . . . the rule of law . . . which stands here for ‘the absence of arbitrary power on the part of the government’ [25].

Clearly prescribed laws that provide citizens with a set of rights and protections when facing expropriation can serve as a reference point when citizens wish to challenge government and private actor expropriation and compensation decisions in court. At the same time, clear guidance in expropriation laws can also protect investor interests by decreasing the risk of arbitrary expropriation of development projects. As stated by Cotula et al.,

Specific-enough wording for compliance requirements to be enforceable and transparency in their application are key to ensure fair implementation in the public interest—avoiding on the one hand creeping expropriation of the investment through arbitrary government application of these requirements, and on the other collusion between government officials and investors to avoid sanctioning where investment plans are not complied with [26].

Nigeria’s LUA in its current form contains legal gaps, ambiguities, and grants broad discretion to State Governors to make expropriation and compensation decisions with limited oversight by the judiciary. For these reasons, the law leaves affected populations vulnerable to expropriation without adequate compensation or remedies in the event that their tenure rights are violated. To ensure that compensation covers the losses borne by affected landholders, this article argues that the LUA should require the government to follow clear legal procedures that ensure government transparency and landholder participation throughout the expropriation, compensation, and resettlement processes. If sufficiently clear and robust, such procedures can enable affected landholders the right to seek redress in court and allow for judges to effectively scrutinize expropriation and compensation decision-making. Specific recommendations for reforming the LUA are provided in Section 6 (the conclusion) of this article.

1.2. Definition of Terms Used in This Article

- “Expropriation” for purposes of this article refers to the power of government to acquire legally recognized tenure rights, without the willing consent of the tenure holder, in order to serve a public purpose or otherwise benefit society. In this paper, “expropriation” refers to eminent domain, takings, compulsory purchases, compulsory acquisitions, and other names given to this government power around the world.
- “Affected populations (communities)” are the populations whose tenure rights are affected by expropriation.
- “Tenure rights” are the rights of individuals or groups, including Indigenous Peoples and communities, over land and resources. Tenure rights include, but are not limited to ownership, freehold possession rights, use rights, and rental, customary and collective tenure arrangements. The bundle of tenure rights can include the right of access, withdrawal, management, exclusion, and alienation.
- “Forced eviction” refers to “the permanent or temporary removal against their will of individuals, families and/or communities from the homes and/or the land which they occupy, without the provision of, and access to, appropriate forms of legal or other protection” [27].

While the issue of “forced eviction” is also briefly discussed in this article, “forced eviction” is not synonymous with expropriation. Forced evictions may occur for a “public purpose” or for other purposes—for example, in some cases, informal settlers may be forcibly evicted from government-owned land for any purpose. The key difference between “expropriation” and “forced eviction” is that expropriation usually requires the government to show land was acquired for a “public

purpose” and it usually requires some form of compensation payment for legally recognized tenure rights. Forced eviction, on the other hand, is broader: it may occur whenever people are removed from their land against their will without legal and other protection. Although international human rights law dictates that people must be consulted before they can be forcibly evicted [27], domestic laws often grant governments authority to forcibly evict informal occupants from government-owned land without requiring them to prove the eviction is for a “public purpose” or pay compensation to these occupants.

1.3. List of Acronyms

The following acronyms are used throughout this article:

- Environmental Impact Assessment (EIA)
- Federal Capital Development Authority (FCDA)
- Memorandum of Understanding (MOU)
- Land Use Act (LUA)
- Lagos State Government (LSG)
- Lekki Free Zone Development Company (LFZDC)
- Lekki Worldwide Investment Limited (LWI)
- Lekki Free Trade Zone (LFTZ)
- Voluntary Guidelines on the Responsible Governance of Tenure (VGs).

1.4. Roadmap

This article is divided into six sections. Section 2 discusses empirical research on land conflicts due to expropriation and forced eviction in Nigeria and other countries. Section 3 highlights international standards on expropriation, compensation, and resettlement. Section 4 provides a legal analysis of Nigerian laws that apply to expropriation, compensation, and resettlement. Section 5 provides an in-depth examination of the LFTZ case, and includes a discussion of the findings from in-person surveys of affected communities conducted in August 2017. Section 6 draws conclusions from the research and provides a set of recommendations for the Nigerian government to follow when expropriating land and compensating, resettling, and reconstructing the livelihoods of communities affected by development projects.

2. Empirical Research on Land Conflicts due to Expropriation and Displacement in Nigeria and Other Countries

The negative social and economic impacts associated with expropriation and witnessed in the LFTZ case, including violent conflict, displacement, and impoverishment, have been well documented, both in Nigeria and in other countries [28–30]. This section provides a discussion of land conflicts that have resulted from development projects and were in many cases caused by expropriation. This section also provides some background and context for the LFTZ case by citing cases of forced eviction and expropriation that have occurred in Nigeria.

Government failure to recognize customary tenure rights to land and resources held by indigenous and local communities is commonly cited as a key source of land conflict [31]. Across many parts of Nigeria and other agrarian economies in Africa, there are billions of hectares of undeveloped commons customarily held and used by indigenous and rural communities for farming, grazing, firewood, medicinal plants, spiritual practices, and other basic needs [32]. For centuries, these ancestral lands have been essential to the survival, wellbeing, and cultural identity of local communities. Yet governments continue to assert ownership over the vast majority of land, wrongly assuming these areas are vacant, idle, and *terra nullius* (i.e., nobody’s land) [33]. While there is a growing recognition of customary land rights in several national laws, governments often retain underlying legal authority over community land; due to this, governments have discretion to lease or otherwise transfer

large tracts of community land to private companies for large-scale development projects [34–36]. Community use of agricultural land for farming and subsistence purposes often directly contrasts with commodification, a primary goal of many development projects [37]. The failure of governments and private companies to recognize, respect and protect community land rights is commonly cited among NGOs and civil society as a trigger for conflict, displacement, human rights abuse, and environmental degradation [38].

Throughout the Global South, governments and project developers have on many occasions exposed themselves to financial as well as other risks by failing to negotiate with communities prior to compulsorily acquiring their land [8]. An examination of over 362 land disputes in Africa, Asia, and Latin America found that the vast majority were caused by community displacement and insufficient compensation, while over two thirds of these disputes resulted in significant delays and work stoppages [8]. A recent study of 51 cases of land conflict in Asia found 47% of these cases involved violence, 65% led to a material impact for project backers, and 45% of conflicts were triggered by displacement [39]. Other research on land conflicts in India shows that such conflicts have been pervasive and have stalled investment projects worth billions of dollars [40]. Dell'Angelo et al. conducted a meta-analysis of large-scale land acquisitions and found, among other results, that:

Acquisitions are generally characterized by imbalanced power relations, and they are not conflict free. The degree of conflict varies through different forms of coercion, such as when deals are closed without the informed consent of previous land users, who are excluded from the negotiation process, not adequately informed about the implications of these acquisitions, or evicted and forced off the land which is often associated with instances of physical violence [41].

Other research highlights how competition over land and resources coupled with missing legal, institutional, and traditional/customary protection of land and resource rights can trigger land conflict in many regions [42].

In Nigeria, empirical research suggests that local landholders commonly view expropriation as a tool for “dispossessing the poor to elevate the rich” [1]. In the Niger Delta, a region of Nigeria that for many years has been damaged by piracy, kidnappings, and violent conflict over oil, scholars have argued that the lack of strong and coherent legal framework for protecting the land and resource rights of local communities has been a root cause of the ongoing conflict [43]. According to Obi,

The impact of the [LUA] on the Niger Delta was serious, as the people viewed it as an act of injustice . . . having lost ownership of their land to the government, the most the oil communities could claim from oil multinationals was compensation or surface rents [compensation for crops and other above-ground resources] . . . Since the oil-producing communities had no legal claim to the ‘ownership’ of oil produced from under their lands and waters, they had little or no leverage in making successful compensatory claims as a result of land expropriation [43].

Lack of ownership rights to land, adequate compensation, benefit-sharing arrangements, and jobs from the oil industry reportedly led several community members in the Niger Delta to take up piracy and extract oil and money from companies operating in the region through illegal means such as kidnapping, theft, and violent attacks against refineries and ships [44]. A representative from Transparency International suggested that government officials might have colluded with pirates to extract money and oil from industries [44].

Outside of the Niger Delta, the Nigerian government has been criticized several times by human rights organizations for its expropriation practices, which have often resulted in forceful evictions, particularly in urban areas where millions of Nigerians have been displaced for urban expansion and redevelopment purposes [45,46]. Large-scale development projects also caused many displacements in rural areas [47,48]. UN Habitat estimated that, between 2000 and 2007, the pattern of forced eviction in

Nigeria left at least two million people displaced from their home in different parts of the country [45]. The following paragraphs highlight just a few of the many cases of forced eviction and displacement in Nigeria.

2.1. Forced Evictions in Abuja

In the early 2000s, Abuja's Federal Capital Development Authority (FCDA) evicted an estimated 800,000 people to implement the Abuja Master Plan [49]. Research shows that the FCDA did not adequately inform the public ahead of time about which settlements would be demolished [49]. Consequently, bulldozers suddenly arrived before affected landholders had the opportunity to find alternative land and housing. According to a UN Habitat report, "The FCDA demolished homes, schools, clinics, churches, mosques, and businesses without adequate consultation with communities, and without providing adequate notice, compensation, or adequate resettlement" [45]. Likewise, another report by two local human rights organizations found that, "the [Abuja] evictions have resulted in the massive displacement of hundreds of thousands of people from entire communities, with a spiraling effect on health, education employment, and family cohesion. Some of the demolitions were accompanied by violence perpetrated by heavily armed security operatives against residents and business owners" [49]. As a result of forced eviction in Abuja, homelessness became pervasive, families were torn apart, robbery and crime became rampant, and children lost access to healthcare and education [49].

2.2. Forced Evictions in Lagos

Forced evictions for urban development have also been common in Lagos. In 1996, over 250,000 businesses and homes were demolished in Lagos as part of a three-week slum clearance operation; an estimated 750,000 people were affected by this operation [45]. More recently, the Lagos state government came under international scrutiny for reportedly stripping communities of their homes and violating human rights; Amnesty International published a report in 2013 which found that the Lagos state government violated human rights when forcefully evicting people from their homes for urban redevelopment in Badia East, where over 200 homes and business structures were demolished [46]. According to the report, the government refused to grant compensation to affected communities on the grounds that it was "mindful of setting a precedent . . . whereby illegal occupiers of land without development permits have to be paid full compensation upon eviction" [46]. At least 10,000 people were forcibly evicted in Badia East between 2013 and 2015 [29].

In November 2016, the LSG reportedly evicted over 30,000 residents of Otodo Gbame, Ilubirin and Ebute Ikate waterfront communities in Lagos State; an additional 4000 residents were removed in March 2017 [50]. Amnesty International reported that, since 2000, more than two million people were displaced from their homes in informal settlements and waterfront communities across Lagos state [50]. The government justified these evictions "as a security measure in the overall interest of all Lagosians", claiming that these communities posed a security risk without giving further explanation [51]. The government reportedly did not give prior notice and suddenly began bulldozing; after members of the Otodo Gbame community formed human chains around their houses, armed police reportedly fired bullets at them and sprayed them with tear gas [50,51]. This incident forced communities to flee in terror to nearby canoes while their homes were demolished [51]. At least one person was reportedly shot in the neck by police and died [51]. In June 2017, the Lagos High Court ruled that the government-ordered evictions of Lagos waterfront communities was "unconstitutional" and ordered that the government stop forced evictions—if respected and enforced by the government, this ruling could prevent an estimated 270,000 other residents of Lagos from losing their homes [52].

Based on the aforementioned empirical research, it can be argued that land tenure is insecure in many places across Nigeria and that both rural and urban communities remain vulnerable to expropriation and displacement. The following sections highlight a key reason for this tenure insecurity

by discussing the LUA's failure to comply with international standards on land expropriation and compensation, and protect affected communities in the LFTZ case.

3. International Standards on Expropriation and Compensation

Before presenting the findings from the legal and survey research, it is important to first discuss the various internationally recognized standards on expropriation, compensation, and resettlement. The Voluntary Guidelines on the Responsible Governance of Tenure (VGs) are the first internationally recognized guiding principles, which aim to protect the land tenure rights of all persons, particularly vulnerable and marginalized groups [53]. The UN Committee on World Food Security (CFS), a body consisting of 193 governments, endorsed the VGs in 2012. The VGs include a broad range of principles on legal recognition and allocation of tenure rights, indigenous and customary tenure systems, informal tenure, land administration, women's land rights, and other topics. While the VGs are not legally binding on state actors, they were developed based on 10 regional consultations that brought together almost 700 people representing 133 countries, and indicate an emerging international consensus among governments, NGOs, academia, civil society, and the private sector as to how land tenure should be governed [54,55]. Section 16 of the VGs establishes standards on expropriation, compensation, and resettlement (see Table 1). For this reason, the legal analysis conducted in this section of the article is primarily based on Section 16 of the VGs:

Table 1. Highlights from the VGs.

According to Section 16, States should:
<ul style="list-style-type: none"> • Provide a clear definition of “public purpose” in law to allow for judicial review • Minimize the amount of land acquired • Only acquire the minimum resources necessary • Be sensitive where proposed expropriations involve areas of particular cultural, religious, or environmental significance, or where the land is important to the livelihoods of the poor and vulnerable • Identify, inform and consult affected populations at all stages of the expropriation process • Pay fair and prompt compensation to all legitimate tenure rights-holders · Provide productive alternative land and adequate housing • Explore feasible alternatives to forced eviction in consultations with affected landholders • Avoid or minimise the need for evictions
According to Section 18.2:
<ul style="list-style-type: none"> • Policies and laws related to valuation should strive to ensure that valuation systems take into account non-market values such as social, cultural, religious, spiritual and environmental values where applicable.

The VGs contain broad, open-ended terminology that is left up to states to interpret. For example, the VGs call for states to respect “all legitimate tenure rights” but do not define what constitutes “legitimate” tenure. Moreover, Section 16.3 of the VGs provides that “States should ensure a fair valuation and prompt compensation in accordance with national law.” Yet this VG principle does not define the terms “fair valuation” or “prompt”. Presumably, states are permitted to develop their own definitions of “legitimate tenure” “fair valuation” and “prompt” in domestic laws. Aside from Section 16, Section 18.2 of the VGGTS establishes additional standards on land valuation and states “policies and laws related to valuation should strive to ensure that valuation systems take into account non-market values such as social, cultural, religious, spiritual and environmental values where applicable.”

There are several other international guidance documents that shed light on the meaning of “fair valuation” for land. For example, the Food and Agricultural Organization of the United Nations (FAO)

publication, Land Tenure Studies 10: Compulsory acquisition of land and compensation (hereinafter “FAO Handbook”), published in 2008, presents good practices for conducting expropriations and compensating landholders and recommends that compensation should be based on the principles of equity and equivalence [56]. These principles mean that affected persons should receive “no more or no less than the loss resulting from the compulsory acquisition of their land”. The FAO Handbook is discussed in more detail in Section 4. Although the FAO Handbook is not officially endorsed by the international community, it reflects what FAO and many international experts view as good practices for ensuring equitable access to land and increasing land tenure security.

There are also a number of NGOs that developed guidance on land valuation, including the International Standards Valuation Council (ISVC), UN Habitat, and True Price. The ISVC produced a set of standards for determining “market value”, which is a common method of calculating compensation for land in many countries. The ISVC defines market value as “the amount for which an asset or liability would exchange on the valuation date between a willing buyer and a willing seller in an arm’s length transaction after proper marketing wherein the parties each acted knowledgeably, prudently, and without compulsion” [57]. Since the definition contains the clause “wherein the parties each acted knowledgeably, prudently, and without compulsion”, it suggests surveys and negotiations must take place between affected communities and governments. UN Habitat also recently developed guidance on valuing unregistered lands in a variety of countries [57]. Moreover, the University of Groningen and True Price are currently working with a variety of academics, private sector bodies, and NGOs to develop a protocol on fair compensation in cases of land tenure change [58].

Several other international instruments establish standards and good practices for expropriating land and compensating landholders. For example, the 2016 World Bank Environmental and Social Standard 5 on Land Acquisition, Restrictions on Land Use and Involuntary Resettlement (ESS5) establishes requirements that borrowers of Bank funds must follow if their development projects entail land acquisition and involuntary resettlement. Under ESS5, the rate of compensation is calculated as the “replacement cost, and other assistance as may be necessary to help [affected landholders] improve or at least restore their standards of living and livelihoods” [59]. Replacement cost is defined as a method of valuation yielding compensation sufficient to replace assets, plus necessary transaction costs associated with asset replacement [59].

International standards on expropriation and compensation are also established by the IFC Performance Standards 5 and 7, United Nations Basic Principles and Guidelines on Development-Based Evictions and Displacement, the Asian Development Bank Handbook on Resettlement, the Centre on Housing Rights and Evictions Pinheiro Principles, and the UN Human Rights Commission Principles and Guidelines on Development-based Evictions and Displacement. The UN Declaration on the Rights of Indigenous Peoples and ILO Convention 169 on Indigenous and Tribal Peoples also established standards on expropriation and compensation where the rights of Indigenous Peoples are at stake [60,61]. The aforementioned international standards are discussed in some of the sections below, but the focus of the legal analysis in this article is on the VGs because they indicate a growing international consensus among governments, NGOs, civil society, and the private sector on responsible land governance standards [54,55].

As explained in Section 4 of this article, there are significant gaps between Nigeria’s legal framework and international standards on expropriation and compensation. For reasons discussed below, these gaps expose Nigerian landholders to significant risks including landlessness, homelessness, hunger, poverty, and other socioeconomic risks [16].

4. Comparative Legal Analysis of Land Use Act with International Standards on Expropriation and Compensation

Recent studies that examine expropriation and compensation procedures in 50 countries across Asia, Africa, and Latin America indicate that Nigeria’s legal framework lags behind many of the other countries assessed in terms of its compliance with international standards on expropriation,

compensation, and resettlement [2,13]. The governing law on expropriation in Nigeria is the Land Use Act (LUA), a law that has been highly criticized by NGOs, scholars, and the public [62]. As discussed in Section 2 of this article, the Nigerian government has been condemned by human rights organizations for its forced evictions and poor expropriation practices. Since there is potentially significant room for improvement in terms of law and practice in the country, we chose to focus on Nigeria. Moreover, given how much land was expropriated and the expansive nature of the LFTZ (as discussed in Section 5, the LFTZ may eventually become the largest free trade zone in Africa), we considered the LFTZ case to be particularly important and worthy of attention and analysis. In our view, the findings and recommendations presented in this article can be used to reform laws and practices related to expropriation, not only in Nigeria but also in other countries in which legal reforms to expropriation laws are desperately needed.

The Constitution of Nigeria (1999) states that no property can be acquired without “prompt payment of compensation” and a right to access courts of law or tribunals for the determination of “his interest in property and the amount of compensation” [63]. This constitutional provision is implemented through Section 29 of the LUA, 1978 which permits State governors to acquire land for “overriding public interests” [64]. The LUA applies to all land expropriations in the country. Initially passed as a Presidential Decree in 1978 during Nigeria’s military era, this LUA eventually became an Act in 1990. Widely considered to be an inadequate and flawed law, the LUA has undergone several failed attempts at revision since its enactment in 1990 [65].

Section 1 of the LUA vests all land in State Governors in trust and administered “for the use and common benefit of all Nigerians.” Based on this provision, individuals and communities are not legally permitted to own land in Nigeria. However, under Section 5, State Governors are authorized to grant statutory rights of occupancies to “any person” rural and urban areas. State Governors can also grant customary rights of occupancy to “any person or organization” for agricultural, residential, grazing, and other purposes. The LUA does not define the terms “person” or “organisation” so it is unclear who qualifies as person or organization for purposes of the LUA; however, in practice these terms have been interpreted to include individuals or communities. Corporations can also be granted rights to land under Section 51 of the LUA. Section 6(b)(2) of the LUA states that “no single right of occupancy shall be granted . . . in excess of 500 hectares if granted for agricultural purpose, or 5000 hectares if granted for grazing purposes.” According to Sections 21 and 22 of the LUA, statutory and customary rights of occupancy cannot be alienated by assignment, mortgage, transfer of possession, or sublease without the government consent.

Under Section 36 of the LUA, customary occupiers² or holders who used land for agricultural purposes prior to passage of the LUA are considered lawful possessors of their agricultural land “as if a customary right of occupancy had been granted to the occupier and holder” [64]. However, there are no transitional provisions concerning rural land that is not used for agricultural purposes; presumably all statutory rights to such land were extinguished upon the enactment of the LUA [66,67]. In many parts of Nigeria and other countries, groups of individuals and families share common interests in land areas, and govern, manage, and use land based on long-standing customs and traditions (i.e., customary tenure). Customary land tenure typically refers to community-based systems of land ownership and administration that have longstanding origins in the norms and practices of communities that often go back centuries. Customary land tenure exists in most countries even though statutory law does not always recognize it. In Nigeria and other countries, legal rights to land (e.g., titles or deeds) can be granted rights to communities as well as individuals.

Importantly, the LUA does not explicitly recognize legal rights to unfarmed, undeveloped land [66,67]. The Local Government, if it is satisfied that an occupier or holder is entitled to possession,

² In section 51, the LUA defines customary rights of occupancy as “the right of a person or community lawfully using or occupying land in accordance with customary law and includes a customary right of occupancy granted by a local government.”

and upon the production of the occupier's sketch, diagram or sufficient description of land, may register the holder or occupier and grant a customary right of occupancy (Section 36(3), LUA). However, State Governors retain broad discretion to revoke rights of occupancy (Section 38, LUA). Moreover, the World Bank's LGAF report on Nigeria found that in practice,

Enforcement of rights of the recognized tenure types is ... a problem because most individual land rights (in rural and urban areas) are not mapped/registered ... the mechanisms for rights recognition is poor because the absence of legislated procedures makes land management agencies develop administrative procedures for recognizing land rights which are often implemented arbitrarily. For instance, although non-documentary forms of evidence can be used to obtain claims to property, they have less strength than the documented evidences that are acceptable based on the judgment of the officer in charge [1].

For the various reasons discussed in detail below, LUA fails to adopt internationally recognized standards on expropriation and compensation as established in the Voluntary Guidelines on the Responsible Governance of Tenure (VGs).

4.1. Definition of Public Purpose

According to Section 16.1 of the VGs, "States should expropriate only where rights to land ... are required for a public purpose. States should clearly define the concept of public purpose in law, in order to allow for judicial review." An international survey revealed that "public purposes" commonly includes public buildings, public utilities, transportation, public parks, and defense purposes [56]. However, in many countries, governments retain broad authority to expropriate land for "economic development" purposes, including natural resource extraction, agricultural production, and other revenue-generating activities [12]. In Peru, for example, the government issued a ministerial decree in 2000 declaring oil palm to be a crop that serves the "national interest" [68]. This decree gave the government and expropriating companies broad discretion to extract oil palm from the Amazon rainforest without following environmental and land use planning requirements. Unless laws clearly define the concept of "public purpose", there is a risk that governments will abuse their expropriation power, which could result in public mistrust of government, tenure insecurity, displacement, and other negative outcomes [13]. For instance, land may be acquired under the pretext of a public purpose when the actual purpose is to transfer land to private companies that will use the land for purposes that do not support local economic growth or otherwise benefit the public.

Nigeria's LUA 1978 fails to comply with VGS principle 16.1 because it provides a vague, open-ended legal definition of "public purpose" ostensibly granting State Governors broad discretion to interpret what constitutes a "public purpose." The LUA does not adequately limit the Governor's authority to expropriate land under the pretext of a public purpose and transfer such land to private companies that aim to use the land exclusively for profit-making activities that may not necessarily benefit the public. For instance, there is no explicit provision that subjects the Governor's expropriation decision to a review by an independent committee or judiciary. The LUA does not require the government to determine, prior to expropriating land, whether the proposed project is (1) necessary to serve a public purpose; (2) suitable (reasonably likely to achieve the intended public benefit, and (3) whether the benefits deriving from the expropriation are proportionate to the costs borne by affected populations [14].

Section 28 of the LUA grants the Governor the right to revoke a right of occupancy for overriding public interest. Both statutory and customary rights of occupancy can be revoked. Statutory rights can be acquired when land is needed for "public purposes within the State", including when land is needed for mining or the construction of oil pipelines. Similarly, customary rights can be acquired for public purposes, mining purposes, the extraction of building materials, and a broad range of other purposes. According to Francis, the LUA "empowers the local land allocation committees to expropriate almost any land within their areas of control and to allocate it for either public or private

use The tenure of rural land is allowed to remain undisturbed except where it conflicts, at any point, with the interests of capital holding developers, whether public or private” [66].

Section 51 of the LUA broadly defines “public purpose” as including for “exclusive Government use or for public use”, for “use by any body corporate”, for mining, public works, or “economic, industrial, or agricultural development”. The LUA does not subject State Governors’ decisions on what constitutes a public purpose to oversight by the judiciary. Governors have broad discretion to establish a justification for compulsorily acquiring land. Since Section 51 states “public purpose includes . . . ” the list of purposes is not exhaustive, suggesting that the State Governor can expropriate for other purposes not listed in the Act. The vaguely defined purposes in the LUA are problematic for a number of reasons. Since there are no checks in place to ensure corporate parties granted expropriated land continue to serve the public interest, this provision could allow expropriation to be used exclusively for private economic gain without benefitting the public. Moreover, the LUA does not limit the State Governor’s authority to acquire land under the pretext of a public purpose and transfer such land to private companies, even when the actual purpose will not promote local economic development or otherwise serve a public purpose. The LUA’s broad definition of “public purpose” opens the door for potential misuse and abuse by the Governor. For instance, the Governor may acquire land under the pretext of a “public purpose”, where the real motive is to transfer land to private companies for private gain without ensuring these companies will create jobs or otherwise boost the local economy.

Even if a Nigerian court decides to review a State Governor’s expropriation decision, the “public purpose” provision is so broad that it remains unclear on what grounds courts can overrule public purpose justification decisions. In other words, the LUA does not provide guidance for courts to scrutinize “public interest” decisions. For this reason, the LUA’s vagueness opens the door for potential misuse and abuse of expropriation power. In practice, Nigerian courts rarely overrule expropriation decisions made by the State Governors. In our legal review of expropriation cases, we found only one instance in which the Lagos High Court ruled that the State Governor’s decision to expropriate land for development purposes was ruled unconstitutional [52]. However, this High Court ruling did not focus on the “public purpose” issue, but rather held the expropriation and forced eviction of communities were unconstitutional because there was no resettlement plan in place [69].

4.2. Limitations on the Amount or Type of Expropriated Land

Section 16.1 of the VGS provides that “[States should acquire only] the minimum resources necessary.” Moreover, Section 16.2 establishes that “States should be sensitive where proposed expropriations involve areas of particular cultural, religious, or environmental significance, or where the land is particularly important to the livelihoods of the poor and vulnerable.” Additionally, Article 9.9 of the VGs and Article 10 of the UN Declaration on the Rights of Indigenous Peoples and Article 16 of ILC Convention 169 provide that Indigenous Peoples shall not be forcibly removed from their land or territories without their free, prior and informed consent (FPIC) [60,61,70]. The VGs also states that “States and other parties should hold good faith consultation with indigenous peoples before initiating any project or before adopting and implementing legislative or administrative measures affecting the resources for which communities hold rights.”

The LUA, on the other hand, does not require State Governors to minimize the amount of land acquired to the amount necessary to achieve a public purpose. Moreover, indigenous and other rural communities are not granted special protection from expropriation. Section 28 of the LUA merely states that it shall be “lawful for the Governor to revoke a right of occupancy for overriding public interest.” Yet there are no restrictions on the type of land that the Governor is permitted to acquire. The LUA does not oblige the government to respect the indigenous right to Free Prior and Informed Consent prior to initiating development projects. The LUA does not require the government to be sensitive to areas of cultural, religious, or environmental significance or areas held by the poor and vulnerable groups such as indigenous communities when deciding to expropriate.

When land is expropriated for development projects, government and private sector bodies must conduct an Environmental Impact Assessment (EIA) before initiating development projects in Nigeria. Under Nigeria's Environmental Impact Assessment Decree of 1992, "the public or private sector of the economy shall not undertake or . . . authorise projects or activities without prior consideration, at an early stage, of their environmental effects" [71]. The EIA must include a description of the potential affected environment including specific information necessary to identify and assess the environmental effects of the proposed activities [71]. Section 7 of the Decree states "before the [Environmental Standards and Regulations Enforcement] Agency gives a decision on an activity to which an environmental assessment has been produced, the Agency shall give opportunity to government agencies, members of the public, experts in any relevant discipline and interested groups to comment on the environmental impact assessment of the activity" [71]. However, as Aldinger points out, public participation in the EIA process in Nigeria has been average at best due to low levels of public knowledge and awareness of projects and hearings regarding projects [72].

4.3. *The Process of Expropriating Land*

Section 16.2 of the VGs calls for states to "ensure that the planning and process for expropriation is transparent and participatory. Anyone likely to be affected should be identified, and properly informed and consulted at all stages." Similar requirements are established in the World Bank ESS5 and IFC Performance Standard 5; these requirements apply to projects funded by the World Bank and IFC. IFC Performance Standard 5 requires clients to engage with affected communities and disclose relevant information on projects to allow participation in the planning, monitoring, and implementation of projects. Moreover, IFC clients must conduct a census to collect appropriate socio-economic baseline data to identify the persons who will be displaced by project and determine who is eligible for compensation and resettlement assistance.

In contrast, the LUA does not require the government to survey affected landholders, provide information on the project, or consult landholders prior to expropriating land for development projects. Notices of acquisition do not necessarily have to be served prior to expropriating land. Section 28(7) of the LUA merely states that rights of occupancy shall be extinguished on receipt by him of a notice or on such later date as may be stated in the notice. According to Otubu, "the Act does not provide for pre-acquisition notices to be issued and or served on the affected citizens, thus engendering ambushing tactics, executive tyranny and surprise conducts on the part of the acquiring authority to the detriment of the populace" [62].

4.4. *Compensation for Unregistered Landholders*

Section 16.1 of the VGs call for states to "respect all legitimate tenure rights holders, especially vulnerable and marginalized groups, by . . . providing just compensation in accordance with national law." The VGs do not define the term "legitimate tenure", and leave up to define this term in national laws [73]. Section 3.1 of the VGs calls for states to "respect legitimate tenure holders and their rights, whether formally recorded or not." The term "legitimate" with regard to land tenure is commonly defined as including both legal legitimacy (rights recognized by law) and social legitimacy (rights that have broad acceptance among society) [74]. In addition to the VGs, The UN Declaration on the Rights of Indigenous Peoples, ILO Convention 169 on Indigenous and Tribal Peoples, and IFC Performance Standard 7 establish that indigenous communities have a right to fair compensation when their lands, territories, and resources are expropriated [60,61,75].

The LUA only grants compensation for statutory and customary rights of occupancy that are recognized by the State Governor (Section 6, 29, 36(4), LUA). Although the LUA indicates that a customary right of occupancy can be recognized based on customary use and occupation, it can be inferred from the law that landholders must obtain a certificate of occupancy or otherwise register their land rights with the State Governor in order to be eligible for compensation upon expropriation. Section 36(4) of the LUA provides that Governors may register customary rights of occupancy "if satisfied",

indicating that the Governors have broad discretion to decide whether or not to recognize customary rights. The World Bank LGAF report found that in Nigeria, “compensation ... is paid for some unregistered rights (such as possession, occupation etc.) however those with other unregistered rights (which may include grazing, access, gathering forest products etc.) are usually not paid compensation” [1].

4.5. Valuation of Compensation

As stated above, the VGs call for the creation of land valuation systems that takes into account non-market values, such as social, cultural, religious, spiritual and environmental values where applicable. In 37 of 50 countries analyzed, fair market value (FMV) is the legally required method expropriating authorities must use to value compensation for land and there are no allowable alternatives which can be used to value land in areas where land markets are weak or non-existent [2]. For a variety of reasons and in a range of locations, “market value” may be an insufficient approach to value land, especially when indigenous and rural community land is expropriated because there is no FMV and no clear way to compensate for the social, cultural, spiritual values attached to such land [2]. In India, for example, several laws restrict community rights to sell their land so there is a lack of robust land markets in many community land areas [76].

In terms of appropriate alternatives to valuing compensation, the “replacement cost” approach (required by the World Bank Environmental and Social Framework), or a combination of the FMV and replacement cost approach, may be preferable since “replacement cost” focuses more on the amount it would actually take to replace lost assets [77]. In countries with robust and functioning land markets, the replacement cost should be approximately equal to fair market value, but this is not always the case [2]. In areas with weak or non-existent land markets, the fair market value may be less than the replacement cost. The FAO Handbook further explains,

Compensation should be for any disturbances or other losses to the livelihoods ... The disturbance accompanying compulsory acquisition often means that people lose access to the sources of their livelihoods. This can be due to a farmer losing agricultural fields, a business owner losing a shop, or a community losing its traditional lands [56].

Under Section 29(1) of the LUA, when land is expropriated, holders and occupiers are entitled to compensation based only on the land’s “unexhausted improvements.” “Unexhausted improvements” are defined in Section 51 of the LUA “as anything of any quality permanently attached to the land, directly resulting from the expenditure of capital or labour by an occupier ... and increasing the productive capacity, the utility or the amenity thereof and includes buildings, plantations of long-lived crops or trees, fencing ... but does not include the result of ordinary cultivation other than growing produce”. In other words, compensation is limited to the improvements and crops on the land, but does not cover the value of the land itself. Presumably the government has discretion to determine which assets attached to the land have a level of “productive capacity” that is sufficient to justify compensation. Since the government has discretion to determine which improvements and crops are worthy of compensation, all landholders are potentially at risk of receiving insufficient compensation. Yet indigenous communities who use land for subsistence purposes and for other “unproductive” purposes (e.g., ancestral burial grounds) are at risk of income loss and poverty since this provision precludes any holders of unfarmed, undeveloped land from obtaining any compensation when their land is expropriated [62]. As argued by Otubu,

Not only is there no compensation for bare undeveloped land irrespective of whatever cost incurred at acquiring the land either from the state or the community ... the Act does not recognize the need to pay compensation for severance ... no compensation [is payable] for injurious affection and any other incidental and collateral losses ... [62].

The LUA does not require that compensation reflect the loss of economic activities and intangible land values, such as spiritual/cultural values. While there is no clear formula for calculating such

values, good faith negotiations between developers and communities could be used to capture the viewpoints of affected landholders regarding these values. Since the LUA does not contain clear and robust legal provisions that ensure compensation addresses all of these losses, landholders are vulnerable to losing land without sufficient compensation.

According to a Nigerian lawyer at Lekki Free Zone Development Company (LFZDC) that we interviewed, the Lagos Lands Bureau has broad discretion to value compensation for crops and has often used arbitrary, outdated assessment methods resulting in insufficient compensation rates. Since the LUA does not contain clear legal provisions that ensure compensation addresses all land values and livelihood losses, and ensure compensation is adjusted for inflation and reflects current market rates, landholders may have little recourse or ability to hold the Lands Bureau accountable if they are dissatisfied with compensation decisions. Even if affected landholders challenge compensation decisions in court, the LUA does not provide adequate guidance for judges to follow when determining whether compensation decisions violate the law. In essence, the LUA fails to prevent the Lands Bureau from engaging in arbitrary, ad-hoc decision-making on compensation, and leaves Nigerian landholders uncertain about whether they have justiciable legal rights to full compensation.

4.6. Prompt Payment of Compensation

The VGs call for “prompt” payments of compensation, but the VGs do not establish an explicit deadline by which compensation must be paid. International standards established by the World Bank, IFC, and other bodies typically call for compensation to be paid to the landholder prior to the taking of possession of acquired land. For instance, IFC Performance Standard 5 states “the client will take possession of acquired land and related assets only after compensation has been made available” [78]. The FAO Handbook explains “when an acquiring agency takes possession before full compensation is paid, there may be little incentive for it to make the final payment” [56].

Although Section 44 of the Constitution of Nigeria, 1999 requires “prompt” compensation, the LUA does not require compensation to be paid prior to the taking of possession of the acquired land. The LUA does not even establish a deadline for payment of compensation. Ostensibly, this means that compensation may be paid at any time after the acquisition of land. Landholders may have to wait years to receive compensation, and could be prone to poverty, landlessness, homelessness, food insecurity, and other serious risks while waiting. According to the World Bank LGAF report on Nigeria, “the speed at which compensations are paid to property owners is also very slow . . . a large number of acquisitions occur without prompt and adequate compensation” [1].

4.7. A Right to Negotiate Fair Compensation

Although the VGs do not explicitly call for states to provide affected landholders with the right to negotiate compensation levels, Section 16.6 of the VGs establishes that “all parties should endeavor to prevent corruption, particularly through use of objectively assessed values, transparent and decentralized processes . . . ” It can be argued that compensation negotiations are necessary to obtain “objectively” assessed values, since the alternative is compensation rates-based solely on the government’s opinion. The FAO Handbook explains that “fair and transparent negotiations help break down barriers between the acquiring agency and these land is being acquired, and permit each party to better understand the needs of the other” [56]. Other international standards call for procedures by which affected landholders are granted the opportunity to negotiate fair compensation; for instance, IFC Performance Standard 5 requires project developers (i.e., clients) to allow communities to give input on how much compensation they should receive through a process of community engagement [19,78]. Under the IFC, affected landholders are permitted to reject offers of compensation and participate in the compensation and resettlement decision-making [78].

The LUA does not grant affected landholders the right to negotiate compensation. As discussed above, the Lands Bureau is granted broad discretion to determine a fair rate of compensation without a system of checks to ensure objective assessment. The Lands Bureau can conduct the valuation without

consulting, negotiating, or otherwise obtaining input from affected landholders. Without a procedure by which affected landholders can participate in compensation decision-making, it is unlikely that the Lands Bureau will be equipped to fully comprehend the magnitude of the livelihood losses that result from expropriation. The LUA's "take it or leave it" approach to providing compensation could force affected landholder into the unfavorable position of having to choose between no compensation and insufficient compensation.

4.8. The Right to Challenge Compensation Decisions in Court or before Tribunals

Section 16.6 of the VGs also calls for states to provide a right to appeal compensation decisions. Such appeals may be needed if the government calculates compensation using illegal or incorrect methods and, consequently, landholders are left with insufficient compensation [13].

Nigerian law complies with this VGs principle because it grants affected landholders the right to seek redress in court. Section 44 of the Constitution of Nigeria, 1999 provides "any person claiming such compensation [shall be given] a right of access, for determinations of his interest in the property and the amount of compensation, to the High Court having jurisdiction in that part of Nigeria." Also, Section 39(1)(b) of the LUA grants the High Court exclusive original jurisdiction over proceedings to determine any question as to the persons entitled to compensation payable for improvements on the land." However, further research is needed to determine whether landholders are usually afforded redress in court when they wish to challenge compensation decisions. As previously discussed, since the LUA does not provide clear procedures or guidance on valuing compensation, it is unclear whether courts will be able to effectively scrutinize compensation decisions. The World Bank LGAF report found that "in the instances where complaints about expropriation were lodged [in the three years prior to the LGAF study], a few were listened to but decisions on them were rarely reached on time" [1].

4.9. Provision of Productive Alternative Land

Section 16.9 of the VGs establishes that, when acquiring land in a compulsory manner, "States should, to the extent that resources permit, take appropriate measures to provide adequate access . . . to productive land." The World Bank ESF and IFC Performance Standards also require options for alternative land.

The LUA partially complies with this provision because it permits alternative land to be granted to affected landholders if their right of occupancy is revoked; however, the Governor has discretion to offer alternatives but is not legally obligated to do so. The LUA grants affected landholders either monetary compensation or alternative land, but not both. Moreover, there is nothing in the LUA requiring that alternative land be productive, suitable, or of the same status as the land acquired. Section 33 of the LUA provides that the "Governor . . . may in his or its discretion offer in lieu of compensation . . . resettlement in any other place or area by way of reasonable alternative accommodation (if appropriate in the circumstances)." Yet there is nothing in this provision that guarantees suitable alternative land for affected landholders. More importantly, Nigeria lacks a robust resettlement and rehabilitation procedure that protects landholders displaced by expropriation and ensures their livelihood reconstruction post-displacement. Without such a procedure, affected populations may be far more likely to suffer from displacement, homelessness, joblessness, increased morbidity, food insecurity, and other risks [16]. For a summary of the legal analysis provided in this Section, see Table 2.

Table 2. Summary of the Legal Analysis.

International Standard	Origin of the Standard	Does Nigeria's LUA Comply with This Standard?	Comment
States should clearly define the concept of public purpose in law, in order to allow for judicial review	FAO VGs Section 16.1	No	Section 51 of the LUA vaguely defines "public purpose"
States should acquire only the minimum resources necessary. States should be sensitive where proposed expropriations involve areas of particular cultural, religious, or environmental significance, or where the land is particularly important to the livelihoods of the poor and vulnerable.	FAO VGs 16.1–16.2	Mostly no with the exception of the EIA Decree 1992	The LUA does not require State Governors to minimize the amount of land acquired to the amount necessary to achieve a public purpose. Aside from the EIA requirement, Nigeria's laws do not require the government to be sensitive to areas of cultural, religious, or environmental significance or areas held by the poor and vulnerable groups such as indigenous communities when deciding to expropriate.
States should ensure that the planning and process for expropriation is transparent and participatory. Anyone likely to be affected should be identified, and properly informed and consulted at all stages	FAO VGs Section 16.2	No	The LUA does not require the government to survey affected landholders, provide information on the project, or consult landholders prior to expropriating land for development projects.
States should respect all legitimate tenure rights holders, especially vulnerable and marginalized groups, by providing prompt and just compensation. Land valuation systems should take into account non-market values, such as social, cultural, religious, spiritual and environmental values	FAO VGs Sections 16.1 and 18.2	Partial	The LUA only grants compensation for statutory and customary rights of occupancy that are recognized by the State Governor. Compensation is limited to the improvements and crops on the land, but does not cover the value of the land itself. The LUA precludes holders of unfarmed, undeveloped land from obtaining any compensation when their land is expropriated. The LUA does not require compensation to be paid prior to the taking of possession of the acquired land. There is no established deadline for payment.
All parties should endeavor to prevent corruption, particularly through use of objectively assessed values, transparent and decentralized processes.	FAO VGs 16.6	No	The LUA does not grant affected landholders the right to negotiate compensation. The Lands Bureau is granted broad discretion to determine a rate of compensation. There is no guidance on valuing compensation to allow for judges to scrutinize compensation decisions.
States should provide a right to appeal compensation decisions	FAO VGs 16.6	Yes	Section 44 of the Constitution of Nigeria provides the right to appeal compensation decisions in court
States should, take appropriate measures to provide adequate access to productive land	FAO VGs 16.9	Partial	The LUA permits alternative land to be granted to affected landholders if their right of occupancy is revoked; however, the Governor has discretion to offer alternatives but is not legally obligated to do so-affected landholders can receive either monetary compensation or alternative land, but not both. There is no established resettlement procedure which ensures livelihood reconstruction for affected populations

5. Examination of LFTZ Case

This section provides an overview of the events that unfolded in Lekki since the inception of the LFTZ. It also reveals findings from in-person surveys of 140 affected households; these surveys

were conducted with 10 communities affected by the LFTZ. This section also discusses findings on the LFTZ case gathered from interviews with government officials and company representatives and desk reviews of relevant primary and secondary sources.

5.1. Background on the Development of the LFTZ

To address economic stagnation, the Nigerian government has sought out foreign investors to stimulate economic growth through public infrastructure investment [79]. Chinese investors have been among those most willing to finance development projects in Nigeria [79]. Trade between China and Nigeria increased from 2 billion USD in 2000 to 18 billion USD in 2010, making Nigeria a top destination for Chinese Foreign Direct Investment [79]. In 2015 alone, \$9.2 billion of Chinese goods were shipped from China to Nigeria [4].

Nigeria became a target for Chinese investors following the end of Nigerian military rule and the democratic election of President Olusegun Obasanjo in 1999 [79]. Throughout Obasanjo's presidency, China and Nigeria signed a series of agreements and MOUs establishing trade offices and investment centers. Obasanjo's main goals with China were to trade "oil for infrastructure", to improve the quality of Chinese manufactured goods entering the Nigerian market, and to establish tax-exempted export processing zones (i.e., free trade zones) [11]. The Lekki Free Trade Zone is the first zone in Nigeria in which Chinese companies are majority shareholders [11].

In 2006, the LFTZ was initiated through a joint venture between a state-owned company called Lekki Worldwide Investments (LWI), the Lagos State Government, and a Chinese consortium of companies, lead by China Civil Engineering Construction Corporation (CCECC), which is now called China-Africa Lekki Investment Ltd. (CALI, Lagos, Nigeria) [80]. This joint venture resulted in the establishment of the Lekki Free Zone Development Company (LFZDC). The China Railway Construction Company, China-Africa Development Fund, China Civil Engineering Construction Corporation, and Nanjing Jiangning Economic and Technological Development Corporation established CALI as a joint venture in March of 2006 [80]. CALI owns sixty percent of the LFZDC equity, and LWI owns 40% [80]. Following the Nigeria Export Processing Zones Act 63 of 1992, the Nigerian federal government and Lagos State government authorized LFZDC as the sole legal entity responsible for developing, operating, and managing the LFTZ [4,80]. The main investment sectors of the LFTZ are manufacturing, oil and gas (storage and distribution), real estate, tourism and infrastructure development. According to the LFZDC website, the stated objectives of the LFTZ are to stimulate the Nigerian economy, create a global economic haven, create and encourage integration with foreign partners, generate employment opportunities, attract foreign investment, diversify the Lagos revenue base, "ensure effective exploration" of Nigeria's resources, and create wealth for citizens [80].

Since Chinese investors are the majority shareholders of the LFZDC, it is important to recognize potential influence that these investors have over the LSG and the possible power dynamics between investors, the government, and the public. Investors typically have a primary interest in making profit, and may be incentivized to avoid the costs associated with investing in countries with extensive regulations, including obligations to compensation and resettle affected landholders. For this reason, investors may view Nigeria as attractive since there are only minimal compensation requirements established in the LUA. As it stands, the LUA enables investors to acquire land from governments relatively easily without having to overcome too many legal hurdles. Investor influence over development projects may affect whether the LSG decides to reform the LUA to include more robust compensation and resettlement requirements that safeguard the rights of local landholders. Reforming the LUA may be unappealing to government and private investors that currently benefit from the status quo because the establishment of more robust compensation packages and resettlement and rehabilitation procedures may slow down the land acquisition process and increase costs for project backers. Nevertheless, even if it is more expensive for governments and investors in the short term, it may be in their best interests in the long term to fully compensate and otherwise accommodate affected landholders prior to initiating projects because research has shown that failure to do so could

lead to significant work project delays, work stoppages, and increased costs if local communities choose to protest or challenge projects in court [81].

Another issue to consider is that, even if the LUA is reformed so that it adopts international standards, the LSG may still decide to turn a blind eye to violations or only selectively enforce the law in a way that advantages investors as opposed to landholders and the public. For example, the LSG may promise the public that a proposed expropriation will create many jobs and use “economic development” as pretext to disguise an expropriation that is actually intended solely to serve private interests. These potential issues warrant their own study since they are not sufficiently examined in this article.

In October 2006, LFZDC began developing phase 1 of the LFTZ, which required 1200 hectares of land for the creation of China-Nigeria Economic and Trade Cooperation Zone [4]. The initial agreement stated that the Chinese consortium must provide \$200 million for the LSG to allocate the land, and for Nigerian investors to invest \$67 million in the LFTZ [9]. However, there was no stipulation in the agreement that the Consortium’s money must be paid up front, hence the project faced financing issues. Consequently, LSG had to spend \$67 million of the state’s budget in 2009 to fill this financial gap [9].

According to the LFTZ Master Plan, the LFTZ will serve as a multi-functional economic zone and a new modern city (see Figure 1). The construction of the LFTZ is divided into four phases:

- Phase 1 (Southwest Quadrant) will serve a mixed of industries, workers housing, and residences;
- Phase 2 (Southeast Quadrant) will serve petrochemical, oil and gas industries;
- Phase 3 (Northwest Quadrant) will provide workers housing and space for a mix of industries;
- Phase 4 (Northeast Quadrant) will serve commercial businesses, tourism, residential, and other purposes. Thus far it appears that only phase 1 has been completed [4,9].



Figure 1. Lekki Free Trade Zone Master Plan.

While the construction of phase 1 has been completed, progress on the other phases has been slow and riddled with delays due to financial planning and other issues [4]. Based on our tour of the LFTZ, it appears that some factories employ Nigerians. We saw a few Nigerians working security at the front gate of the LFTZ and producing goods in one of the factories located inside the LFTZ. The LFTZ officials we interviewed did not provide us information about job creation, but, it was apparent from our tour and research of the LFTZ that the goal of 300,000 direct jobs for Nigerians was far from reach.

5.2. MOU between LWIL, LSG, and Affected Communities

After publishing a notice in an Official Gazette, the Government acquired 823 Sq. Kilometers of land through expropriation in 1993 [6]. In 2004, 16,500 hectares of this land were set aside for the LFTZ. According to a lawyer we interviewed at Social and Environmental Rights Action Center (SERAC),³ a Nigerian NGO consisting primarily of human rights lawyers, the LSG did not consider compensating affected communities or providing them with alternative land until SERAC began advocating on behalf of the communities in 2007. As shown from the survey findings, the LSG apparently left many community members in the dark about its plans to build the LFTZ and did not promise them compensation, either in 2007 or in subsequent years prior to our August 2017 survey. After SERAC decided to represent and defend communities affected by the LFTZ, a series of meetings led to the development of an MOU in 2007 between the LSG, the Ibeju-Lekki Local Government Council, nine affected communities, and Lekki Worldwide Investment Limited (LWIL) [82]. It is unclear as to why exactly the LSG finally agreed to develop an MOU, but the lawyer we interviewed indicated that pressure from human rights advocates and affected communities contributed to compensation plans becoming part of the government's agenda. Accredited representatives of the affected communities signed the MOU, which obtained consent from the village chiefs. However, it is doubtful, based on our survey research, that all community members were consulted and informed about the MOU prior to the signing it. Nine communities, which are parties to the MOU, reside along the Lekki coast. These communities are:

1. Idasho
2. Idotun
3. Illege
4. Imobido
5. Itoke
6. Okunraiye
7. Illekuru
8. Tiye
9. Imagbon-Segun

Although SERAC represented nine communities in the MOU, there may be as many as 26 communities actually affected by the LFTZ, according to the SERAC representative. The MOU states that the LFTZ must comply with all applicable national and international legal standards. The MOU obliges the LSG to provide a number of compensation entitlements to affected communities, including:

- A 2.5% equity share capital in LWIL;
- Workforce development initiatives such as skills training, job creation, and capacity building;
- Access to educational opportunities at primary and secondary schools;
- Access to health care and recreational services;
- Prompt payment of compensation for all genuine claims made by members of affected villages;

³ SERAC is a Nigerian human rights organization that represented nine affected communities when negotiating the 2007 MOU with the LSG and interested companies.

- No less than 750 hectares of unencumbered land for the resettlement of communities displaced by the project; and
- Certificates of occupancy covering the 750 hectares of unencumbered land.

The MOU also states that the LSG shall not displace the three communities (Idotun, Itoke, and Okunraiye) whose land is identified for a proposed seaport and, if such seaport is developed, shall provide no less than 170 hectares of unencumbered alternative land. These communities have not yet been displaced; however, the seaport is currently under construction and communities in the area believe displacement is imminent. In their interviews, some communities alleged that they had been threatened to vacate by company officials involved in the seaport's construction.

A close examination of the MOU reveals serious flaws. Firstly, the MOU does not provide specifics regarding where the resettlement land must be located, how many jobs must be provided, how many schools and healthcare facilities must be built, and how much compensation must be paid.

Secondly, there is no deadline by which MOU entitlements must be honored, meaning they may be honored at any time. As discussed below, the lack of a deadline enabled the LSG and LWIL to proceed for the past ten years without honoring the provisions of the MOU.

Thirdly, the MOU lumps all entitlements into one pot to be given to all nine communities, and thus ignores inter- and intra-community differences, such as different socio-economic and demographic profiles, endowments of land, crop yields, income levels, and more. According to the MOU, the 750 hectares promised as resettlement land are supposed to be shared by all nine communities. As discussed below, the implementation of this MOU provision led to a convoluted tenure arrangement in which overlapping claims and competing interests prevented affected communities from taking possession of resettlement land.

Fourthly, the MOU designates a Resettlement Committee⁴ as the entity responsible for implementing the provisions of the MOU, but fails to establish specific obligations that the Committee must fulfill. There is no requirement in the MOU stipulating how often the Committee must meet and the MOU does not prescribe a timeframe for fulfilling the various provisions. The MOU further states that the Committee must ensure that "members of the affected villages and communities have free and effective access to information relevant to their understanding and participation in the LFTZ." The MOU states, in the event of a dispute regarding the MOU, parties can appoint mediators and, if that fails, can settle the dispute through arbitration. However, the lack of clear deadlines and other obligations imposed on the Resettlement Committee makes it difficult for affected communities to find grounds on which to challenge decisions taken by the Committee and otherwise hold the Committee accountable for ensuring compliance with the MOU.

For the reasons stated above, the wording of the MOU is problematic because it does not impose specific, concrete obligations on the LSG and LWI that ensure the reconstruction of community livelihoods post-expropriation. While the empirical research presented in the following sections does not clarify why the MOU was worded in such a vague manner, this research does show what can happen when an MOU contains ambiguous language and why clearer MOU provisions are needed to ensure fair compensation and livelihood reconstruction. The survey findings indicate, to some extent, whether the LSG abided by the MOU and the LUA as they are currently written. Specifically, the survey research provides an indication of whether compensation, alternative land, and other entitlements were paid to communities, and whether the LSG followed a transparent and participatory process when expropriating community farmland. For this reason, the survey findings serve the purpose of providing readers with a deeper understanding of the impact of Nigeria's weak expropriation laws

⁴ The Resettlement Committee is charged with implementing the MOU and must be comprised of representatives from the Ibeju-Lekki Local Government Council, LWIL, and affected communities. The LSG must ensure that affected villages and communities constitute no less than 30% representation of the Resettlement Committee.

on local populations, and what steps must be taken to ensure expropriation practices comply with international standards on expropriation, compensation, and resettlement in the future.

5.3. Survey of Affected Communities

The research findings discussed below are based on surveys conducted in August 2017 with 140 households from 10 different affected communities. To support the information given by these communities, interviews were also conducted with Social and Environmental Rights Action Center (SERAC), the Lekki Free Zone Development Company (LFZDC), the Lands Bureau, Lagos Ministry of Commerce, Industry and Cooperatives, and Lekki Worldwide Investment Limited (LWIL). Public records, including the 2007 MOU and the 2016 “Government White Paper on the Report of the Tribunal of Inquiry into the Cause of Civil Disturbances at the Lekki Free Trade Zone on 12 October 2015” (hereinafter “Government White Paper”)⁵ were also reviewed [6]. The evidence provided here is also supported by secondary sources including news articles.

In August 2017, we surveyed 140 households from 10 affected communities, nine of which signed the MOU through their representatives, to determine whether they had received compensation, alternative land, or other entitlements promised by the MOU. The authors conducted the surveys during group meetings with community members and asked questions reported in the questionnaire form available in the supplementary files together with the full survey results (see Supplementary Materials). For the sake of clarity, the main survey questions are displayed in Table 3.

Table 3. List of Survey Questions.

List of Survey Questions	
1.	How many people live in your household?
2.	What is the highest level of education you attained?
3.	What is your age?
4.	What is your primary occupation?
5.	Can you read and write?
6.	What types of crops did you grown on your land before the expropriation?
7.	How many hectares was your farmland?
8.	Approximately how many kilograms (kg) of crops did you grow annually?
9.	Was access to your farmland limited as a result of the LFTZ?
10.	How many crops have you grown annually since the expropriation?
11.	Were you informed about the LFTZ before construction began?
12.	Were you consulted about the implications of the project on your community?
13.	Were you given an opportunity to given input in the expropriation?
14.	Were you made aware of an environmental impact assessment or social impact assessment conducted for the project?
15.	Were you given an opportunity to negotiate compensation?
16.	Were you told which factors were considered when calculating compensation?
17.	What types of compensation were you promised? (e.g., money, alternative land, jobs, or equity shares)
18.	Did the amount of compensation provided cover all of your losses?

In order to conduct the surveys, we had to first obtain permission from each community chief. Once the chiefs consented, they would ask members of the community to come and participate in the

⁵ As discussed in Section 1, the White Paper was published in response to a clash between affected communities and police that ensued after communities barricaded the entrance to LFTZ in protest of the project. The incident resulted in the death of the Managing Director of the LFTZ, Tajudeen Disu. Disu reportedly died from a gunshot, but there were conflicting accounts of who fired the shot. The police subsequently arrested Okunraiye community members believed to be responsible for the death. Meanwhile, community members stated in a sworn affidavit that a stray bullet fired by police killed Disu.

survey. Under customary norms and practices of the communities, the male heads of household have sole authority to speak on behalf of the household. A total of seven widows also participated in the survey. Due to customary rules imposed on us, we were not able to ensure a gender-sensitive survey was conducted. Respondents had to be selected for the survey based on whether they were willing and able to participate in the community meetings during which we were allowed to administer the questionnaire. For these reasons, randomization of the sample was not possible because we had to comply with communities' customary norms (i.e., if we refused to comply with the chief's rules, we would not be allowed to conduct the surveys). Before beginning the surveys, we gave community members an opportunity to discuss their opinions about the LFTZ in front of the whole group. Some of information obtained at the community meetings was included in the analysis (See Sections 5.10 and 5.11). We then began surveying respondents—one household at a time—using tablets and a program called Survey CTO, which enabled us to collect and analyze the survey results electronically.

For this survey, any sampling stratification would be highly speculative, since there is no official register or list of all those living within the affected communities, so the total population of affected communities and their socio-economic and demographic composition is unknown. Due to time and funding constraints, the authors were only able to spend a few hours in each community, so participant observation and ethnographic data was not collected to supplement the survey data. When asked how many households and individuals lived within each community, the chiefs and other community members were only able to give us a rough estimate of total households. Using this information provided by the chiefs, we estimate that our sample represents around 13% of the total number of households in the 10 communities based on the estimated total number of households in each community as shown in Table 4.⁶ For information on the gender, age, literacy levels, education, and employment status of affected communities, see Table 5.

Table 4. Sample composition: respondents by community.

Community	No. of Respondents (Household Heads) [a]	Share (%) of Resp. in the Sample [b]	Estimated Total No. of Households [c]	Respondents/Total No. of Households (%) [d]
<i>Idasho</i>	20	14.29	110	18.18
<i>Idotun</i>	23	16.42	80	28.75
<i>Ilege</i>	6	4.29	120	5.00
<i>Imobido</i>	6	4.29	100	6.00
<i>Itoke</i>	21	15.00	90	23.33
<i>Okunraye</i>	17	12.14	250	6.80
<i>Ilekuru</i>	11	7.86	50	22.00
<i>Tiye</i>	17	12.14	100	17.00
<i>Imagbon-Segun</i>	9	6.43	150	6.00
<i>Oke-Segun</i>	10	7.14	40	25.00
Total	140	100.00	1090	12.84

Table 5. Sample composition: main socio-economic and demographic features.

GENDER			
	Sex	N	%
	<i>Male</i>	123	87.86
	<i>Female</i>	17	12.14
	Total	140	100.00

⁶ Estimates were given to respondents by the community chiefs.

Table 5. Cont.

AGE		
Age group	N	%
25–34	34	24.29
35–44	42	30.00
45–54	27	19.28
55–64	3	2.14
65+	34	24.29
Total	140	100.00
LITERACY		
Literacy level	N	%
Cannot read and write	41	29.29
Can sign (write) only	3	2.14
Can read only	3	2.14
Can read and write	93	66.43
Total	140	100.00
EDUCATION		
Highest grade completed	N	%
None/never attended school	27	19.29
Pre-primary/Kindergarten	1	0.71
Primary	49	35
Secondary	50	35.71
Higher	13	9.29
Total	140	100.00
EMPLOYMENT STATUS		
Current employment status (last week)	N	%
Worked for pay (salary, wage, self-employed, ...)	51	36.42
Worked without pay (apprentice, family business, ...)	39	27.86
Did not work but have a job (sick, vacation, seasonal, ...)	3	2.14
Did not work but looked for a job	13	9.29
Did not work and didn't look for a job (unemployed, retired ...)	34	24.29
Total	140	100.00

5.4. Access to Information and Participation during the Expropriation Process

Several survey questions focused on the extent to which households were given access to information about the LFTZ project, and whether communities were given an opportunity to give input on project plans or otherwise participate in the decision-making expropriation process. Furthermore, since Nigerian law stipulates that an EIA must be conducted prior to initiating development projects that impact the environment, the survey also asked whether respondents were made aware of an EIA conducted for the project.

As shown in Table 4, our survey coupled with our interview with SERAC indicates that the LSG failed to adequately survey, inform, and consult many of the affected communities living in the vicinity of the LFTZ prior to the acquisition of 16,500 hectares of land in 2004. The vast majority of households interviewed responded that the government and private companies did not inform or consult them regarding the LFTZ prior to taking possession of the land (see Table 6). Overall, the results from the survey suggest that the level of participation of local communities during the land acquisition process was very low, and communities were granted little to no information on the LFTZ project as shown in Table 7.

Table 6. Participation and information of local communities affected by the LFTZ.

Question	Yes		No	
	N	%	N	%
<i>Were you informed about the LFTZ project before the project began?</i>	34	24.29	106	75.71
<i>Before the project began, were you consulted about the implications of the project on your community?</i>	5	3.57	135	96.43
<i>Were you informed about the expropriation before the project began?</i>	21	15.00	119	85.00
<i>Were you given an opportunity to give input in the expropriation plans?</i>	4	2.86	136	97.14
<i>Were you made aware of any environmental/social impact assessment conducted for the project?</i>	3	2.14	137	97.86

Table 7. Level of information given to each community.

Community	Were You Informed about the LFTZ Project before the Project Began?		Were You Informed about the Expropriation before the Project Began?	
	No	Yes	No	Yes
<i>Idasho</i>	18	2	18	2
<i>Idotun</i>	22	1	22	1
<i>Ilege</i>	4	2	5	1
<i>Imobido</i>	1	5	1	5
<i>Itoke</i>	19	2	20	1
<i>Okunraye</i>	13	4	15	2
<i>Ilekuru</i>	5	6	6	5
<i>Tiye</i>	15	2	16	1
<i>Imagbon-Segun</i>	1	8	8	1
<i>Oke-Segun</i>	8	2	8	2
Total	106	34	119	21

5.5. Compensation Paid for Crops

From 2010–2013, the LSG paid some compensation for crops and buildings but not for empty land, even though the MOU entitles affected communities to compensation for land [4,6]. Based on the evidence available, it is not clear exactly how much total compensation was paid or how the compensation was calculated. According to the Government White Paper, “the scale used by LSG for compensation in 2010–2013 was drawn up in 2000, at least a 10 year gap. That scale has by reason of inflation and depreciation of the Naira become obsolete and should have been revised upwards” [6]. The LFZDC, LWIL, the Lands Bureau, and Ministry of Commerce were unable to provide us with records of compensation payments or details on the methods used to calculate compensation. The Lands Bureau stated in the interview that some compensation was paid to the local chiefs and heads of families and that the Bureau is still in the process of compensating communities. In 2016, a local newspaper reported that Lagos State Governor Ambode paid an initial 66 Million Naira to affected communities (approximately 183,000 USD) and that Ambode approved an additional 740 Million Naira (approximately 2 million dollars) in compensation for the affected communities [83]. Presumably all of the compensation was sent to the Resettlement Committee, which, under the MOU, is charged with allocating compensation and other entitlements among the affected communities. According to the Guardian article,

Ambode said that an initial 66 million [Naira] had been paid to owners of Parcel A lands, which houses the Dangote Refinery and some other companies while the new compensation approved was for host communities of Parcel B, comprising Yegunda and Abomiti zones [83].

Table 8 shows that 56 of 140 households (40%) surveyed were promised compensation, but only 1 household claimed they were given an opportunity to negotiate compensation. Only 4 of those

56 households (7%) were told how compensation was calculated. Only 38 respondents out of 140 (27%) stated that they actually received any compensation (Figure 2), and the vast majority of them (97%) felt that this compensation did not cover all of their losses (Figure 2).

Table 8. Promised Compensation.

QUESTION	YES		NO		DO NOT KNOW	
	N	%	N	%	N	%
<i>Were you promised any compensation for the expropriation?</i>	56	40.00	83	59.29	1	0.71
<i>Were you given the opportunity to negotiate compensation?</i> (Only if answered YES to previous question)	1	1.79	55	98.21	0	0.0
<i>Were you told how compensation was calculated?</i> (Only if answered YES to the first question)	4	7.14	52	92.86	0	0.0

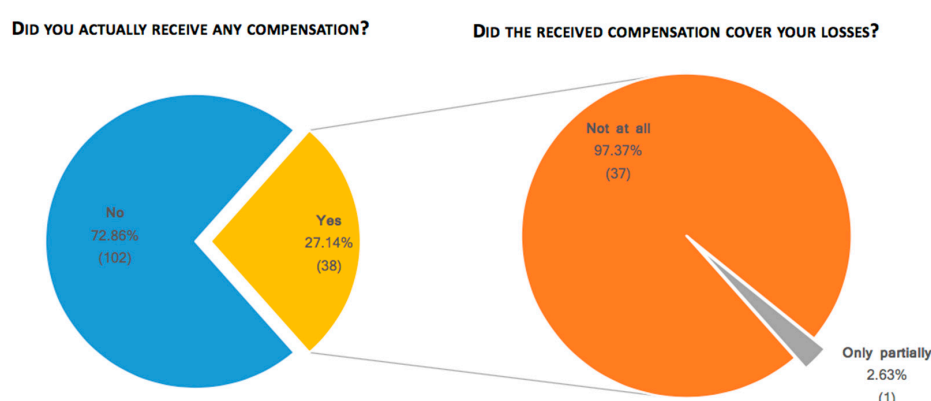


Figure 2. Actual compensation and level of satisfaction (n = 140 respondents).

In a few cases only a lump sum payment for all crops was granted, but it was unclear to the households surveyed how exactly this payment was calculated. In other cases, the respondents were able to report the value of the compensation received for a specific crop, but again the method used to calculate this amount remained unclear. For instance, the reported compensation for cassava ranged from a minimum of 20,000 Naira to a maximum of 100,000 Naira, while the reported compensation for maize ranged between 10,000 and 20,000 Naira (see Table 9). Moreover, the survey findings suggest that there is no clear proportionality between the reported compensation and the average number of hectares of farmland cultivated by households or the average seasonal yield claimed by respondents before the expropriation.

Despite restrictions on the sample size and the risk of respondents overstating or misreporting the quantity of cassava or maize produced on an average season before the expropriation, we calculated the average price at which cassava was reportedly compensated at 12.85 Naira/kg and the average compensation price paid for maize (1.94 Naira/kg). Both values appear to be only a fraction of the retail market price we estimated for cassava (average 141.23 Naira/kg; Min = 60; Max = 412.96) and maize (average 119.66 Naira/kg; Min = 60; Max = 412.96) based on FEWS NET data [84].⁷ Even including those who declared that they were compensated for a crop that their household was not cultivating at the time of the expropriation, our simulations shows that the reported compensation tended to be on average much lower in value when compared to a compensation calculated based on the market price of the crop.

⁷ Price estimates are obtained from the Famine Early Warning System Network (FEWS NET), a project funded by USAID. We used all of the historical data available for Cassava and Maize Retail Prices in the Mile 12 Market in Lagos.

Table 9. Reported compensation for selected crops and estimates of compensation at market price.

CASSAVA						
Community	Reported average ha of farmland cultivated before expropriation	Reported average Cassava production before expropriation (Kg/season)	Reported total value of the compensation received for cassava (NGN)	Reported compensation (NGN/Kg)	Value of compensation at market price (Assuming cassava @141.23 NGN/Kg)	Difference between reported compensation vs. compensation at market price (simulation @141.23 NGN/Kg)
<i>Imagbon-Segun</i>	5	0	20,000	NA	0	20,000.00
<i>Imagbon-Segun</i>	10	5000	20,000	4.00	706,150	−686,150.00
<i>Okunraye</i>	2	600	20,000	33.33	84,738	−64,738.00
<i>Okunraye</i>	5	3500	40,000	11.43	494,305	−454,305.00
<i>Okunraye</i>	61	2000	60,000	30.00	282,460	−222,460.00
<i>Okunraye</i>	0.4	0	100,000	NA	0	100,000.00
<i>Okunraye</i>	6	5000	65,000	13.00	706,150	−641,150.00
<i>Okunraye</i>	5	0	65,000	NA	0	65000.00
<i>Tiye</i>	1.5	6400	20,000	3.13	903,872	−88,3872.00
<i>Tiye</i>	2	800	25,000	31.25	112,984	−87,984.00
<i>Ilekuru</i>	0.3	9600	42,000	4.38	1,355,808	−1,313,808.00
<i>Idotun</i>	120	8000	30,000	3.75	1,129,840	−1,099,840.00
<i>Idotun</i>	112	57,600	25,000	0.43	8,134,848	−8,109,848.00
<i>Ilege</i>	20	3000	20,000	6.67	423,690	−403,690.00
AVERAGE	25.01	7250.00	39,428.57 (\$109 USD)	12.85 (\$0.03 per Kg)	1,023,917.50 (\$2844)	−984,488.93 (−\$2735)
MAIZE						
Community	Reported average ha of farmland cultivated before expropriation	Reported average production before expropriation (Kg/season)	Reported total value of the compensation received for maize (NGN)	Reported compensation (NGN/Kg)	Value of compensation at market price (Assuming Maize @119.66 NGN/Kg **)	Difference between reported compensation vs. compensation at market price (@119.66 NGN/Kg **)
<i>Imagbon-Segun</i>	7	0	0	NA	0	0
<i>Imagbon-Segun</i>	0	0	10,000	NA	0	10000
<i>Okunraye</i>	5	4500	10,000	2.22	53,8470	−52,8470
<i>Okunraye</i>	6	3000	65,000	21.67	358,980	−293,980
AVERAGE	4.50	1875.00	21,250.00 (\$59)	11.94 (\$0.03 per Kg)	224,362.50 (\$623)	−203,112.50 (−\$565)

* The market price for cassava is obtained as the average retail price for the period 2004–2017 in the Mile 12 Market, Lagos (source: <http://www.fews.net/content/staple-food-price-data>);

** The market price for maize is obtained as the average retail price for the period 2009–2017 in the Mile 12 Market, Lagos (source: <http://www.fews.net/content/staple-food-price-data>).

We interviewed an official at the Lagos Lands Bureau who stated that compensation was paid, but did not provide us with documentation or exact figures on compensation payments. This official also stated that the Lands Bureau is in the process of providing more compensation to communities. Some community members we interviewed stated that compensation was, in some cases, as low as 10,000 Naira (27 USD) for all crops. Results from the survey suggest that the calculation of the amount of compensation to be paid for the loss of crops was often discretionary. Indeed, respondents frequently reported different levels of compensation for the very same crop, even inside the same community. Alternatively, they reported they were compensated for a crop they did not grow before expropriation (See Table 9). In turn, the survey results suggest that compensation was often underestimated and paid discretionally, even within individuals belonging to the same community, in a context where there is no evidence of a clear and transparent calculation method. This is particularly important, especially considering that 140 respondents declared that they were cultivating land—both for income generation and household consumption—before the expropriation, while only 5 stated that they are still farming after the expropriation.

In Table 9, we attempted to verify whether the amount of the compensation received by respondents for selected crops—as they reported it in our survey—was consistent with market prices for crops in Nigeria. While the LUA does not specify whether compensation for crops must be set at market rates—instead Section 29(4) of the LUA simply grants the “appropriate officer” discretion to calculate compensation rates—market value is generally used as a benchmark for valuing compensation in many other countries [2]. Column 7 of Table 9 shows significant discrepancies between the amount of compensation provided and the amount that would have been provided if a “market value” approach to valuing compensation was followed, and therefore supports our conclusion that insufficient compensation was provided to affected communities in the LFTZ case.

Each row in the table represents a household in our sample that reported the total value of the compensation received for cassava (see Column 4, upper table) or maize (see Column 4, lower table). Table 9 also shows the community to which each respondent belongs (Column 1), the reported average size of farmland cultivated before the expropriation (Column 2), the reported average seasonal yield (Column 3) and the reported total value of compensation received for selected crops (Column 4). Column 5 shows the average compensation rate in terms of Nigerian Naira per kg. The numbers in Column 5 were obtained by dividing the total value of the compensation received (Column 4) by the average seasonal yield for a given crop (Column 3). We focused on two crops only, namely cassava and maize, due to the availability of information on market values. For these two crops, we were able to retrieve the average retail price per kilogram—in local currency—at which each crop was sold at the Mile 12 Market in Lagos. Once we estimated the average price per kg, we multiplied that price (stated for each crop in the header of Column 6) by the reported average seasonal yield (Column 3), thus obtaining an estimate for the value of compensation at market price (Column 6). The numbers in Column 7 represent the difference between the total value of the reported compensation for each crop (Column 4) and our best estimate of the total compensation calculated using average market prices (Column 6). Overall, this Table suggests that the compensation provided for some crops was far below market rates.

5.6. Possible Corruption

There is a noticeable difference between the amount that the LSG reportedly paid (66 million Naira) and the amount that surveyed communities claimed they received [83]. If compensation has not trickled down to the household level, then it is possible that intermediaries, including members of the Resettlement Committee, may have taken significant portions of the compensation payments. Intermediaries could have also included chiefs or other community “elites” involved in the negotiation around the MOU. Section 29(3) of the LUA provides that compensation may be paid to “the community, the chief, or leader of the community to be disposed of by him for the benefit of the community in accordance with . . . customary law”, or into “some fund specified by the Governor.” The Government

White Paper does not thoroughly investigate crimes of theft or embezzlement, but states “the revelation at the Tribunal was that beneficiaries of compensation were paid in cash and sometimes through proxies in circumstances which facilitate diversion of money, theft, embezzlement, manipulation, and fraud . . . it is no wonder that some of the alleged beneficiaries denied receiving stated amounts of money shown against their names” [6]. Due to the potential corruption in this case, it can be argued that the actions of chiefs and other community elites need to be more closely monitored and that these entities need to be held accountable. Consultation and negotiation with all community members, including women and youth, during the compensation process is needed to ensure that that payments are satisfactory, calculated in compliance with international standards, and made to- every affected household.

5.7. Environmental Impact Assessment (EIA)

As discussed in Section 4.2 of this article, when land is expropriated for development projects, government and private sector bodies are legally required to conduct an EIA before initiating development projects in Nigeria. When interviewed by the authors, the Lagos Lands Bureau stated that an EIA was conducted pursuant to the EIA Decree 1992; however, the official we interviewed was unable to provide us with documentation that indicates an EIA was conducted. None of the community members we interviewed stated that they were able to view the EIA. Other research groups were also unable to access the EIA for the LFTZ; according to report by Heinrich Boll Stiftung, a Nigerian research NGO,

Even though the existence of an EIA report for the LFZ was claimed, it was not made available throughout the research of this report. Also, the community heads have not seen the EIA report. Upon asking the LFZDC to make it accessible, they were told to get a copy from the local government. Getting to the local government they were told that LFZDC has not submitted any EIA report to them [4].

5.8. Alternative Land

According to our interview with the SERAC representative, a certificate of occupancy for 750 hectares of resettlement land was provided to the Resettlement Committee in 2009 [4]. This resettlement land was meant to be shared by all affected communities. However, it encroached on land held by three other affected communities, so three more affected communities were added to the MOU [4].

In 2014, a certificate of occupancy of 375 hectares was provided to the Lekki Coastal Development Association, which is a legal entity managed by the Resettlement Committee [6]. The Government White Paper found that this constituted a breach of the MOU since it is only half of what was promised by the MOU. Moreover, the alternative land was not clearly demarcated, making the boundaries unknown. According to our interview with the Ilekeru community, roughly 96 hectares were sold to a third party, and the remaining portion is largely uncultivable swampland. When interviewed, Ilekeru community members claimed they were unable to access the resettlement land for farming and other subsistence purposes because the land is far away from their homes and widely considered to be uncultivable swampland. Since the MOU is a legally binding document and the LUA provides a right to alternative, affected communities have a legal right to bring claims and seek redress in court. The MOU states,

In the event of any dispute, difference or claim arising out or in connection with this MOU, the parties may appoint mediators . . . if the parties fail to reach a settlement via mediation . . . The matter shall be settled by arbitration . . . this MOU is a legal document and nothing in this section shall fetter the constitutional rights of the parties to seek judicial interpretation and, or enforcement of the terms of the MOU [82].

5.9. Jobs and Equity Shares

None of the affected households we surveyed stated that they were employed by LWIL, even though jobs were promised in the MOU. According to the Government White Paper, “LWIL insists that members of the communities have been favoured with jobs,” but affected communities disagree. Without records showing that jobs were allotted to communities, it is the word of one against another [6]. Additionally, none of the affected households we surveyed received equity shares in the LFTZ. Regarding the 2.5% equity share promised by the MOU, the Government White Paper found these “entitlements have been and are still being denied to the affected communities” [6].

5.10. Arbitrary Detention of Affected Community Members

According to respondents, in 2015, police entered the Idasho community village in the middle of the night and pulled out several community members, including an elderly woman, from their homes. These people were arbitrarily detained in a local prison for several months without legal recourse. Mobile police officers have fired guns into the air to scare off communities from protesting dredging and other development activities.

Several members of the Okunraiye community also reported that they were arrested for merely inquiring about the LFTZ project and attempting to discuss the project with the government. As mentioned in the introduction, 10 of these Okunraiye community members were arrested in response to Dissu’s death in October 2015.

5.11. Displacement of the Illekuru Community⁸

One of the 10 communities we interviewed lost their homes as a consequence of the LFTZ. According to our interview with the community, the people of Illekuru lived and depended on the expropriated agricultural land since the 1700s. Historically, the primary occupations of community members were blacksmithing, farming, hunting and fishing. In the early 2000s, the government demanded land from the community and promised to resettle them to a new land with structure and other basic amenities, such as electricity and water. According to one community member, “the government made promises, but nothing was done.” The government valued their land based on crops and other perennial trees. As farmers, the community primarily cultivated cassava and banana majorly, because they were all farmers. Ultimately, the ancestral land of Illekuru was granted to the Indomie Food Processing Company.

In 2002, the government brought in a bulldozer and heavy machinery and started grading and leveling the Illekuru’s land. People from the community protested the bulldozing of their land and demanded resettlement land. According to a community member we interviewed, “People from the community stood their ground and temporarily stopped the government caterpillar from working, we demanded that the government grant us our new resettlement land.” The Government temporarily suspended work until it could bring in more security personnels (i.e., mobile police). In 2003, the Baale’s (i.e., community chief’s) house was demolished by the development project. The Illekuru community demanded resettlement land. The government promised to grant them 15 hectares of land but only ended up granting 6.3 hectares. The government promised to give the remaining land at a later point, but still had not done so as of August 2017. Consequently, many Illekuru community members have migrated and are living elsewhere. Structures made of brick and bamboo on the original Illekuru land were demolished, but the government did not provide financing or alternative housing: the community was only given 6.3 hectares of bare land. The Illekuru community had to use the little income they had to build new dwellings. The community was given a fraction of the land previously held, and the

⁸ All of the information described in this section comes from an interview we conducted in August 2017 with the Chiefs and other members of the community.

resettlement area encroached on the Okunraiye community's land, so both communities were forced to share the little remaining land.

From our survey of the area, the apparent living condition of the present Ilekuru community was very poor: the community lacked essentials such as schools, healthcare, and security from theft. Many members had moved away to find homes elsewhere. Vibrations from dredging conducted by Dangote Company caused cracks to form in their dwellings. The same dredging also caused flooding in the nearby Okunraiye community. Some community members could not live with the vibration and noise and needed to relocate somewhere else. Land surveyors were consulted on the resettlement land and confirmed that the Ilekuru community could not possess the land because they did not have a Certificate of Occupancy. The Ilekuru community stated that their resettlement land had more recently been sold to someone who claimed to have bought the land from Okunraiye community. The said buyer, unnamed yet presumed by community members to be a powerful politician, told the Ilekuru community to sell their land and collect a small lump sum amount of money or else forfeit their land. In 2016, the Ilekuru Community conceded and sold their land.

At least three other communities (Idotun, Itoke and Okunraiye) remain vulnerable to displacement since the LFTZ is currently building a seaport, the expansion of which may displace these communities in the near future. According to community members, several private contractors warned them to leave and told them that, if nothing else, the noise and vibrations from construction will force them to vacate their lands.

6. Conclusions and Recommendations

The evidence put forth in this article indicates that the government failed to adequately inform, consult, compensate and resettle communities whose livelihoods were affected by the development of the LFTZ. Our interviews and empirical research conducted indicates that the government did not follow a transparent and participatory process when acquiring land and compensating communities, and thus did not comply with international standards. Without a sufficient implantation of a legal framework that limits government authority and protects the property rights and livelihoods of landholders, there is a continued risk that community land may be compulsorily acquired by governments for private gains without sufficient public benefit and payment of compensation, including alternative land, jobs, and benefit shares. As long as the current version of the LUA is in effect, it will continue to subject affected communities to impoverishment, landlessness, food insecurity, and other risks commonly associated with expropriation for development projects [16]. Of course reforming the law will require significant political momentum, public support, and a shift in Nigeria's prevailing paradigm of expropriation, compensation, and resettlement. Equally if not more important to the passage of reforms to the LUA is effective implementation and enforcement of the reformed law. Legal reform will only be as successful as the government institutions and agencies charged with implementing the law enable it to be. The government should bear in mind that effective enforcement of the law will require significant financial support and technical capacity. As discussed in Section 5, the political economy of the LFTZ and other development projects in Nigeria may create incentives for the government and expropriating companies to circumvent costly legal obligations that entail fully compensating and resettling landholders. For this reason, it is of the utmost importance that civil society and members of the public are able to closely monitor expropriating actors so that violators of the law can be brought to court and held accountable for actions that infringe on the land rights of local populations.

From conversing with community members, it appeared that tensions over expropriation and compensation could be approaching a boiling point in the coastal areas of Lekki. Unless their demands are met, community members stated they would continue to protest the project and resist efforts of expanding the seaport (which would encroach on three communities' land). Perhaps the anger and resistance from communities should not come as a surprise to the project developers. Investments in the LFTZ have reportedly surpassed \$100 billion and yet, many affected community members reported

they barely have enough income and food to sustain their livelihoods while they wait for the MOU to be fulfilled [85]. Without land to grow crops, communities primarily rely on fishing for subsistence, which is tedious given the strong water currents, limited water access, and decreasing population of fish. The Government White Paper reported, “the contribution of displacement, impecuniosity, unemployment and youthful exuberance is a predictably potentially explosive cocktail capable of causing a serious break down in law and order” [6].

What can be done to prevent future unrest and the prolonged impoverishment of affected communities? Honoring the provisions of the MOU is essential to ensure the Lekki communities are fairly compensated. However, to ensure that future expropriations are conducted in a transparent and participatory manner that complies with internationally recognized standards on expropriation and compensation, it is also necessary for the Nigerian legislature to amend the LUA. As it currently stands, the LUA permits the governments and private companies to protect their reputation by arguing that they did not violate the law whenever compensation is delayed or insufficient. A major hole in the law is the lack of a clear, transparent process for calculating compensation that entails landholder negotiations. Such gaps in the law may continue to cause catastrophic losses for landholders displaced or affected by expropriation for development projects. In the LFTZ case, the LUA allowed the LSG to make arbitrary expropriation and compensation decisions behind closed doors using outdated methods. Overall, reforms to the LUA should include provisions that require governments and private actors to comply with international standards by ensuring inclusive, democratized decision-making regarding expropriation and compensation. Specifically, the LUA should:

1. Provide a clear definition of public purpose to allow for judicial review of State Governor’s expropriation decisions. State Governor’s should thus be obliged to conduct a “proportionality test,” which entails examining a proposed expropriation project to determine (a) whether the expropriation project is necessary to serve a public purpose (there are no less intrusive alternatives), (b) whether the project is suitable (reasonably likely to achieve the intended public benefit), and (c) whether the benefits deriving from the expropriation are proportionate to costs borne by affected populations and the environment [14]. The State Governor’s decision on whether a project satisfies the proportionality test should be subject to oversight by the courts.
2. Require government and entities and/or project developers to conduct both an environmental impact assessment and social impact assessment prior to expropriating so that environmental and social issues associated with proposed development projects, including the project’s impact on local land rights, will be thoroughly identified and managed.
3. Establish a consultation and negotiation process whereby affected landholders must be surveyed, informed, and consulted about proposed development projects and the potential impact on their land rights and livelihoods. The LUA should stipulate that all members of communities, not just the chiefs, must be consulted about proposed projects and compensation entitlements. Such a requirement may reduce the risk of expropriation and compensation decisions being made behind closed doors as well as the risk of elite capture of compensation.
4. Recognize the indigenous right to Free Prior and Informed Consent and require the government to be transparent and ensure meaningful community participation in expropriation, compensation, and resettlement decision-making.
5. Require that compensation must be granted directly to households and establish monitoring committees to ensure compliance with compensation plans and prevent elite capture by chiefs and other intermediaries. Require assessors of compensation to consider both the value of land as well as the value of improvements, crops, economic activities, disturbance to livelihood, and other incidental and collateral injuries suffered by landholders, even if the land in question is undeveloped.
6. Base the calculation of compensation on the “replacement cost” where land is expropriated in areas where land markets are weak or non-existent and thus “market value” is difficult to

ascertain. In cases where compensation is based on market value, the LUA should adopt the International Valuations Standards definition of “market value.”

7. Require that compensation must be paid prior to the moment at which the government or private companies take possession of the land. In cases where possession is taken before compensation is paid, require the government to pay interest based on the delay.
8. Require the government to provide affected communities with productive alternative land, where available.
9. Require investment and benefit-sharing arrangements whereby companies must allow affected landholders to own equity in development projects and invest in the education, healthcare facilities, and other basic amenities for affected landholders.
10. Establish an independent valuation board with expert valuers charged with consulting and compensating affected landholders. These expert valuers should consider adopting the principles established in UN-Habitat’s Guide to Valuation of Unregistered Lands (UN Habitat 2017). The process for valuing land and crops should be well-documented and transparent, and valuers should reflect current market rates for the average amounts of crops, livestock, and other improvements found on the land.

Supplementary Materials: The following are available online at <http://www.mdpi.com/2073-445X/7/1/23/s1>, Survey Questionnaire and Results- Compensation for Expropriated Community Farmland (LFTZ case).

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